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SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. 497

JULIUS WILE SONS & CO., INC.,
Petitioner,

vs.

HARRY BRANDT, d b a UNIVERSITY CITY HOUSE OF LIQUORS, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

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To the United States Court of Appeals for the Eighth Circuit.

Petitioner, Julius Wile Sons & Co., Inc., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the case named above on April 27, 1960.

OPINIONS BELOW.

The memorandum opinion of the District Court (R. I 46-50)[1] is not officially reported. The opinion of the Court of Appeals granting petitioner's motion to dismiss re-

[1] The printed record filed in this Court pursuant to Rule 21 (4) of the Rules of this Court is in three parts: the original Record on the first appeal to the Court of Appeals, No. 16,157 Civil (R. I.); the Supplemental Record on the same appeal (R. II); and the Record on the second appeal, No. 16,359 Civil (R. III), incorporating the two previous records by reference (R. III 9-10). Papers and proceedings in the Court of Appeals on the second appeal are cited "R. . . ."

spondents' first appeal (App. 33, infra) is reported at 269 F. 2d 14. The opinion of the Court of Appeals denying petitioner's motion to dismiss respondents' second appeal, and reversing the District Court's ruling (R. 4; App. 15, infra), is reported at 278 F. 2d 904.

JURISDICTION.

The judgment of the Court of Appeals (R. 21; App. 31, infra) was entered on April 27, 1960. A timely petition for rehearing or, in the alternative, for transfer to and consideration by the Court en banc (R. 23) was denied on July 25, 1960, without opinion (R. 44). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED.

Does a foreign corporation "transact business," and thereby subject itself to suit by any retailer who fancies a grievance under the antitrust laws, in every judicial district into which it ships its products, although it ships its products (f. o. b. its out-of-state plant) to only one or two wholly independent wholesalers located in the district, and although it does nothing whatever in the district?[2]

STATUTE INVOLVED.

The statute involved is Section 12 of the Clayton Act, 15 U. S. C., Section 22, which provides:

> Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

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[2] Petitioner also adopts the argument of petitioner James B. Beam Distilling Company in No. 475, October Term, 1960, with respect to the jurisdiction of the Court of Appeals, and desires to be heard on that issue if the Beam petition should be granted.

STATEMENT.

This petition arises out of the same litigation as the petition of Renfield Importers, Ltd., No. 458, October Term, 1960, and the petition of James B. Beam Distilling Company, No. 475, October Term, 1960. The proceedings below are identical, and the questions presented are the same.

1. The History of the Litigation.

This action was brought in the District Court for the Eastern District of Missouri by eighteen retail liquor dealers doing business in St. Louis, Missouri, and vicinity, against fourteen distillers, distributors, wholesalers and retailers of liquor for an injunction and treble damages for alleged violations of the Sherman Act, the Clayton Act and the Robinson-Patman Act. Service on petitioner was made in New York City (R. I 11). The complaint alleges that the defendants created a monopoly in the retail liquor business and that they conspired to monopolize and have monopolized the trade and commerce in the retail liquor business, and in the retail distribution of liquor in the City of St. Louis, Missouri, and vicinity (R. I 1).

Petitioner and two other defendants filed motions to dismiss for improper venue and for lack of jurisdiction over the person (R. I 20). These motions were duly argued, briefed and submitted, and the District Court thereafter sustained the motions and dismissed the case as to the petitioner and the two other defendant corporations. The District Court held that petitioner and the other two defendants were not transacting business in the Eastern District of Missouri within the meaning of Section 12 of the Clayton Act and so were not subject to suit there (R. I 46-50).

An appeal was taken from the orders of dismissal, but the United States Court of Appeals for the Eighth Circuit

dismissed the appeal. 269 F. 2d 14; App. 33, infra. The ground for dismissal was that the alleged cause of action was a single claim against multiple defendants, which did not permit an interlocutory appeal from the orders dismissing the cause as to only three of the fourteen defendants. Upon remand, respondents dismissed their complaint without prejudice as to all defendants except petitioner and the two other defendants which had already been dismissed (R. III 4). On the same day, the District Court issued an amended order striking from its previous order, which sustained the motions to dismiss, any reference to the finding of the District Court that the respondents asserted several claims rather than a single claim. The District Court ordered that the previous order otherwise remain in full force and effect as originally entered (R. III 5).

Respondents then took an appeal from the amended order, and sought review of the amended orders of dismissal as to petitioner and the other two defendants (R. III 6). The United States Court of Appeals overruled a motion to dismiss that appeal, and reversed the venue ruling of the District Court, holding that petitioner and the other two defendants were transacting business in the Eastern District of Missouri within the meaning of Section 12 of the Clayton Act (App. 15, infra). Petitioner now seeks review of that judgment of the Court of Appeals.

2. The Facts Bearing on the Question of Venue.

The material facts in this case are virtually identical with the facts set forth in the petition of Renfield, No. 458, October Term, 1960.[3] As in the Renfield case, the

[3] At no time in the litigation have respondents sought to distinguish between the business operations of Renfield, Beam, and Julius Wile. Thus, while it is true that petitioner (unlike Renfield) has an employee who spends approximately half his working time promoting good will toward petitioner in the Eastern District of

material facts are undisputed, and are set forth concisely in two affidavits filed in the District Court (R. I 22, 25). Petitioner is incorporated under the laws of New York. Its executive offices are located in the City of New York, and all stockholders' and directors' meetings are held in that city. Petitioner is engaged exclusively in the business of importing, blending, bottling and selling liquors, wines, and food specialties. In addition to its executive offices in New York, Julius Wile has only one other plant, a blending and bottling plant located in Peterboro, New Jersey. Petitioner has no offices, plants or warehouses outside the states of New York and New Jersey (R. I 26-27).

Petitioner is not now qualified nor has it ever been qualified to do business generally in the State of Missouri. It has no office, warehouse, plant, distillery or any kind of business operation, or any place for any kind of business operation, within the State of Missouri. It does not maintain an inventory or stock of goods in Missouri, neither owns nor rents property of any kind in Missouri, and has no bank account, transfer agent, registrar or registered agent for service of process in Missouri. It is not listed in any telephone directory or on any door or building directory in Missouri (R. I 27-28).

Petitioner makes no sales at retail to anyone in Missouri. Petitioner sells its products to two wholly inde-

Missouri (without authority to accept orders or make contracts) (R. I 28), respondents' counsel expressly asked the District Court to ignore this fact, stating in oral argument that "it is immaterial whether or not the company has an office, telephone, agent in the district" (Transcript of oral argument in District Court, June 15, 1958, p. 31; see also pp. 23, 27, 32; related in narrative form at R. I 42-45; material excerpts printed in Appendix, pp. 50-60, infra). Accordingly, the only question presented to the District Court, and the only question available for review on appeal, is the question presented at page 2, supra. See the argument directed to this point in Wile's petition for rehearing below, and cases cited therein, App. 42-47, infra. That question is, of course, the question necessarily decided by the Court of Appeals in reversing as to all three defendants.